

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No.10704 of 2004

Between:

Dr.D.Rameshkumar, S/o Ramakrishnaiah, Asst.Surgeon,
M.G.M.Hospital, Warangal, presently R/o Hanamkonda, Warangal.

..... PETITIONER

AND

The Director of Medical Education, Government of Andhra Pradesh, Koti,
Hyderabad- 500 001

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ order or direction, more particularly a Writ in the nature of Mandamus, declaring the non-draftable docket order dated 22-6-2004 as made in OA No.3376/2004 of the Honorable AP Administrative Tribunal declining to grant interim relief therein and consequently set aside the same, and further declare that the action of the respondent in unilaterally giving the postings on promotion without conducting the counseling as was stipulated under G.O.Ms.No.273, dated 21-5-1999 as being illegal and consequently direct the respondent herein to post the Petitioner herein at MGM Hospital, Warangal where a clear vacancy is available by applying the instructions contained in G.O.Ms.No.273, dated 21-05-1999

Counsel for the Petitioner: MR. C.A.RSESHAGIRI RAO

Counsel for the Respondent.: GP FOR SERVICES I

The Court at the stage of admission made the following :

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

“to issue an appropriate writ order or direction, more particularly a writ in the nature of Mandamus, declaring the non-draftable docket order dated 22-06-2004 as made in OA No.3376/2004 of the Honorable AP Administrative Tribunal declining to grant interim relief therein and consequently set aside the same, and further declare that the action of the respondent in unilaterally giving the postings on promotion without conducting the Counselling as was stipulated under G.O.Ms.No.273, dated 21-05-1999 as being illegal and consequently direct the respondent herein to post the Petitioner herein at MGM Hospital, Warangal where a clear vacancy is available by applying the instructions contained in G.O.Ms.No.273, dated 21-05-1999.”

The matter appeared earlier on 25-06-2004 before a Division Bench of this Court. It is not clear from the proceedings of the Court as to the status of the writ petition. As from the docket it does not appear whether the matter was admitted or notice before admission was ordered, however, the Division Bench was pleased to pass an interim order in the following words;

“Status-quo shall be continued as Assistant Professor at MGM Hospital Warangal, pending further orders”.

Therefore, the matter is posted to this date for admission.

The petitioner was working as Assistant Civil Surgeon in M.G.M. Hospital, Warangal. By a proceedings dated 19th May, 2004, he was temporarily promoted as Associate Professor and posted to Government Medical College, Ananthapur along with certain others. Aggrieved by the said decision of the respondent, he filed O.A.No.3376 of 2004 on the file of the A.P.AdministrativeTribunal (for short ‘the Tribunal’). The grievance of the petitioner is that the instructions given by the Government in G.O.Ms.No.273, dated 21st May, 1999, are violated insofar his posting is concerned. The relevant portion of the instructions read as follows:

“1) The posting shall be given on counseling basis, i.e., the list of vacancies shall be displayed and candidates called in one by one base on seniority to indicate their choice of posting orders shall be issued on the spot to the candidates, and a permanent Register maintained for recording postings on counseling.”

It can be seen from the above that those instructions read that at the time of the counseling, the Government servants are required to be asked to give their choice of posting in the order of seniority and their choice is required to be accepted. According to the petitioner, he wanted retention at the M.G.M.Hospital, Warangal, but contrary to his choice, he was posted to Government Medical College, Anantapur.

The Tribunal admitted the above mentioned O.A. and ordered notice on the interlocutory application filed along with the O.A. on 22nd June, 2004. It appears that in the above mentioned interlocutory application the petitioner sought an interim direction to the effect that the respondent be directed to post the petitioner herein as Associate Professor at M.G.M. Hospital, Warangal.

Various questions, such as, whether the instructions contained in G.O.Ms.No.273, dated 21st May, 1999, referred to earlier, are absolute and binding on the respondents herein; whether such instructions create a justiciable right in favour of the petitioner; are matters which are required to be decided in the O.A. at the time of hearing.

The limited point, for consideration at this stage, is that the Tribunal did not even reject the interlocutory application, but ordered notice on that application in order to know the reasons, if any, which prompted the respondent, not to accept the choice of the petitioner. Assuming that some kind of enforceable right is created under the said G.O., it is doubtful whether the respondent is obliged to fill up the post, which the petitioner is asking. It must be remembered that it is not a case where the respondent is overlooking the choice of the petitioner and accommodating somebody else who is junior to the petitioner in the post in dispute. We do not know what administrative exigencies weighed with the respondent to keep the post in dispute vacant. It is a matter for the administration to decide what are its priorities and which post is required to be filled up first.

The learned counsel for the petitioner very strenuously argued that the issuance of notice on the interlocutory application amount to non-exercise of the jurisdiction vested in the Tribunal and therefore, can be interfered with by this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India, and in support of his submissions he referred to various cases viz., OM PRAKASH AND OTHERS v. STATE OF RAJASTHAN AND OTHERS, A. RATNAM AND OTHERS V. GOVERNMENT OF A.P., EDUCATION DEPT. HYDERABAD, V.VINOD RAO AND OTHERS V. GOVERNMENT OF A.P. REVENUE DEPT. AND OTHERS, G.S. VENKATA RAMANA AND OTHERS V. GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD AND OTHERS AND, R. MANJULA AND ANOTHER V. PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (SERVICES.I) DEPT., HYDERABAD AND ANOTHER.

Without going into the details of the cases cited supra, it can be safely stated that the jurisdiction of this Court to examine the legality of any order, be it a final order or interim order of the A.P.A.T., is not in doubt though we are also aware of the view taken by one of the Division Benches of this Court in BYSANI ANJANEYULU v. TRILINGA TECHNICAL AND MANAGEMENT CONSULANT (PRIVATE) LIMITED AND OTHERS, wherein it was held that the issuance of notice on the interlocutory application is not an order or decision which can be reviewed in exercise of the jurisdiction under Article 226 of the Constitution of India.

Another Division Bench of this Court in R.MANJULA AND ANOTHER v. PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (SERVICES.I) DEPT., HYDERABAD AND ANOTHER , also took a similar view with a slight modification and held as follows:

“31. In our considered opinion, refusal to grant an *ex parte* interim order in every case by the Tribunal cannot be characterized as a ‘decision’.”

In substance, it is not the question whether this Court has the jurisdiction to examine the legality of an interlocutory order passed or declined to be passed or issuance of a notice in a given set of facts in an interlocutory application. It is within the discretion of the Tribunal to decide whether an order should be passed in an interlocutory application even without hearing the respondents in a given case or to

decide whether the respondents should be heard before an order is passed. Unless there are exceptional circumstances demonstrable from the record that issuing notice to the respondents would result in a grave miscarriage of justice or would adversely affect the public interest, we do not find any reason why this Court, in exercise of writ jurisdiction under Article 226, should interfere with the discretion of the Tribunal.

Eventually, the fact remains that it is a case where the petitioner was transferred from one place to another. If the Tribunal after hearing the merits of the case comes to the conclusion that the impugned order is not in accordance with law, the Tribunal can always grant an appropriate relief and remedy the damage, if any, caused to the petitioner.

In the circumstances, we do not see any exceptional reasons to exercise our jurisdiction under Article 226 and interfere with the discretion of the Tribunal. We do not see any merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed at the stage of admission. No costs. The interim order granted earlier stand dissolved.

J.Chelameswar, J

Goda Raghuram, J

28-07-2004

mrk

To

1. The Director of Medical Education, Government of Andhra Pradesh, Koti, Hyderabad- 500 001.
2. Two CCs to Government Pleader for Services-I, High Court of A.P., Hyderabad (O.U.T.)
3. 2 CD Copies.